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MINISTRY OF LABOUR & EMPLOYMENT

NOTIFICATIONS

New Delhi, the 29th April 1958

S.O. 728.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following awards of the Central Government Industrial Tribunal, Orissa, Berhampur in the matter of the following applications under section 33A of the said Act from:—

- (1) Srimati Menjo of the Orissa Mineral Development Co., Ltd., Barbil.
- (2) Srimati Manjari of the Orissa Mineral Development Co., Ltd., Barbil.
- (3) Shri Puthu of the Orissa Mineral Development Co. Ltd., Barbil.

BEFORE THE SOLE-MEMBER, INDUSTRIAL TRIBUNAL, ORISSA.

PRESENT:—Shri L. Panda, B.A., B.L.,—*Member.*

CASE No. 4/56 (CENTRAL GOVERNMENT)

BETWEEN

The O.M.D. Co., Ltd., Barbil.

AND

The Workmen of O.M.D Co., Ltd., Barbil.

In the matter of an application under Section 33-A by Srimati Menjo.

AWARD

(1) The above named applicant complains that her services as miner were illegally terminated by the Company during pendency of Tribunal proceedings and she prays to be re-instated with back wages.

(2) The company oppose the prayer contending that the applicant was suffering from epilepsy and was admitted into the Company's hospital and the Medical Officer reported that she was liable to get periodical fits and unfit to be employed in the mines.

(3) At the time of enquiry, the Company did not appear and from the evidence of the applicant, it is seen that she was getting fits previously but not now. She also admits that she was in the Company's hospital. She says she is fit to work.

No medical certificate or evidence is adduced by either party. The field of work being mines and pits, it is risky if a person liable to sudden fits is allowed to work. So I order that the applicant be allowed to resume her duties upon her producing a certificate of fitness from any Assistant Civil Surgeon. The period of her absence be treated as leave on loss of pay and there shall be no break in the continuity of her service.

(4) An award is passed accordingly and be submitted to the State Government.

(Sd.) L. PANDA, Member.

The 29th March, 1958.

BEFORE THE SOLE-MEMBER, INDUSTRIAL TRIBUNAL, ORISSA.

PRESENT:—Shri L. Panda, B.A., B.L.,—Member.

CASE No. 4/56 (CENTRAL GOVERNMENT)

BETWEEN

The O.M.D. Co., Ltd., Barbil.

AND

The Workmen of O.M.D. Co., Ltd., Barbil.

In the matter of an application under Section 33-A of the I.D. Act filed by Mst. Manjari.

AWARD

(1) The applicant was a miner under the company along with her husband Pithu and her case is that she had gone home on 10 days leave with her husband who fell sick and so overstayed the leave and she also was forced to stay with him and when he returned to work, she was refused employment.

(2) The Company had filed counter alleging that the applicant had remained absent without leave for a long time and was treated as having left her job voluntarily. They, however, did not appear at the time of enquiry.

(3) The applicant is the only witness examined and from her evidence, it is established that she had gone on leave with her husband who fell sick and returned to work much time after expiry of the leave. There being no other evidence, it has to be held that she was absent due to sufficient cause and as such the Company was not entitled to refuse work to her. So she is entitled to be re-instated.

(4) Regarding arrear wages, there is no evidence as to when the applicant reported for work nor is there evidence that she did not seek other employment during this period. So she is not entitled to arrear wages.

(5) Therefore, I pass an award directing the Company to re-instate the applicant to her work forthwith and the period of her absence shall be treated as leave on loss of pay and there should be no break in the continuity of her service. Her prayer for back wages is refused.

(6) The award be submitted to the Union Government.

(Sd.) L. PANDA, Member.

The 29th March, 1958.

BEFORE THE SOLE-MEMBER, INDUSTRIAL TRIBUNAL, ORISSA.

PRESENT:—Shri L. Panda, B.A., B.L.,—Member.

CASE No. 4/56 (CENTRAL GOVERNMENT)

BETWEEN

The O.M.D. Co., Ltd., Barbil.

AND

The Workmen of O.M.D. Co., Ltd., Barbil.

In the matter of an application under Section 33-A of the I.D. Act by Puthu, a workman.

AWARD

(1) The above named complainant alleged that he was discharged from service as a miner by the Company during pendency of Tribunal proceedings and without assigning any reason. He prayed for re-instatement and back wages.

(2) The Company filed a counter denying the above allegations and contending that the applicant remained absent without leave for more than 10 days which was a misconduct according to Standing Orders of the Company and that he was charge-sheeted and gave an explanation that he was sick but failed to appear at an enquiry and so the Company treated him as having voluntarily left his job.

(3) At the time of enquiry, the Company did not appear to adduce evidence and the applicant was the only witness examined. From his evidence, it is seen that he proceeded on 10 days leave but could not return as he fell sick. He further states that though he returned to work, he was not taken to work though he had produced a medical certificate.

(4) This evidence is uncontradicted and so it is seen that there was justifying reason for the absence of the applicant and he is entitled to be re-instated in his former post. Regarding wages for the period of unemployment, the applicant has failed to prove as to when he returned back to ask for work nor is the medical certificate produced to show the period of his illness. Moreover, there is no evidence that the applicant is still unemployed anywhere and the possibility of his having worked elsewhere during the period is not excluded. So he can not be allowed any arrear wages.

(5) So an award is passed directing the Company to re-instate the applicant in his former post forthwith and the period of his absence be treated as leave on loss of pay and there shall be no break in the continuity of his service.

(6) The award be submitted to the Union Government.

The 29th March, 1958.

(Sd.) L. PANDA, Member.

[No. LR11-37(8)/58.]

S.O. 729.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following awards of the Central Government Industrial Tribunal at Calcutta in the matter of the applications under section 33A of the said Act from Sarvashri Mangaloo, Hira Lal Gayan, Baistamb and Mazahar Ali of the Calcutta Port Commissioners.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA.

20/1, Gurusaday Road, Ballygunge, Calcutta-19.

APPLICATION No. 2 of 1958 (U/s 33-A)

Mangaloo, Ex-Fitter, Wagon Shop, C.M.E. Dept, c/o C.P.C. Workers Union.
3 Joykrishna Paul Road, Calcutta-23—*Complainant.*

Vs.

Calcutta Port Commissioners, 15, Strand Road, Calcutta-1—*Opposite Party.*

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 filed in connection with Reference No. 1 of 1956.

PRESENT

Shri A. Das Gupta, Sole Member.

Dated the 28th March, 1958

APPEARANCES

Shri A. L. Roy of C.P.C. Workers Union—*for the complainant.*

Shri K. B. Bose, Counsel, and Shri N. M. Das Gupta, Advocate—*for the Port Commissioners.*

AWARD

The present application has been filed by Shri Mangaloo, Ex-Fitter, Wagon Shop, C.M.E.'s Department, complaining that the service conditions applicable to him regarding payment of gratuity have been altered during pendency of the main adjudication proceedings without any previous permission of the Tribunal before whom the adjudication proceedings were pending.

2. The application is opposed by the Port Commissioners. The main adjudication proceedings in respect of the industrial dispute between the Calcutta Port Commissioners and their workmen started before me on the 31st July 1956. The petitioner retired from the Port Commissioners' service on 15th July, 1956.

3. Section 33 of the Industrial Disputes Act, 1947 prohibits, during the pendency of adjudication proceedings in respect of an industrial dispute, alteration, to the prejudice of the workmen concerned in the dispute, of the service condition applicable to them immediately before the commencement of the adjudication proceedings, and discharge or punishment by dismissal or otherwise of any workman concerned in such dispute save with the express permission in writing of the Tribunal and section 33-A provides that in the event of any contravention of the provisions of section 33, the aggrieved employee may make a complaint in writing and the Tribunal is to adjudicate upon the complaint as if it were a dispute referred to or pending before it in accordance with the provisions of the Act and shall submit its award to the appropriate Government.

4. Industrial Tribunals can assume jurisdiction over industrial disputes and adjudicate upon such disputes only on a reference under section 10 of the Act by the appropriate Government. This is the general law. Section 33-A lays down a special law specifying the special circumstances under which an industrial tribunal can assume jurisdiction over an industrial dispute without any reference from the appropriate Government. As section 33-A lays down a special law, it must be strictly interpreted. An aggrieved workman can invoke the provision of section 33-A of the Industrial Disputes Act only when the pre-requisite conditions are fulfilled. The pre-requisite conditions are:

- (i) an adjudication proceeding in respect of an industrial dispute must be pending before the tribunal;
- (ii) an employer must have altered the service conditions of the workmen to their prejudice or has discharged or punished by dismissal or otherwise any workman;
- (iii) such acts of the employers must have been in relation to workmen or workman concerned in the dispute;
- (iv) that such acts of the employer have taken place during pendency of the adjudication proceedings;
- (v) the employer has not obtained any previous permission in writing of the Tribunal for these acts.

Thus it is clear that only such workmen as were concerned in the dispute which was subject matter of adjudication proceedings before this Tribunal are competent to file a petition of complaint under section 33-A of the Industrial Disputes Act. The present petitioner retired from service before the adjudication proceedings started before me. He cannot, therefore, by any stretch of imagination be deemed to have been concerned in the dispute which was the subject matter of the adjudication proceedings. In this view of the case the present application under section 33-A of the Industrial Disputes Act, 1947 is not maintainable. It is accordingly rejected. This is my award.

(Sd.) A. DAS GUPTA,

CALCUTTA;

Sole Member,

The 28th March, 1958.

Central Government Industrial Tribunal,
Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, AT CALCUTTA.

20/1, Gurusaday Road, Ballygunge, Calcutta-19.

APPLICATION No. 9 of 1958 (U/s 33-A)

Hira Lal Gayan, Boiler Maker, Gr. II, T. No. 672, c/o C.P.C. Workers Union,
3, Joykrishna Paul Road, Calcutta-23—*Complainant*.

Vs.

Calcutta Port Commissioners 15, Strand Road, Calcutta-1—*Opposite Party*.

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 filed in connection with Reference No. 1 of 1956.

PRESENT

Shri A. Das Gupta, Sole Member.

Dated the 28th March, 1958

AWARD

The present petition of complaint under section 33-A of the Industrial Disputes Act was filed by Hira Lal Gayan, Boiler Maker, Gr. II, T. No. 672, on the

11th March, 1958. The award in relation to the main dispute between the Port Commissioners, Calcutta and their workmen was published in the Gazette of India, dated the 30th January, 1958. Under section 20 of the Industrial Disputes Act read with sections 17 and 17-A, the adjudication proceedings must be deemed to have concluded on the 1st March, 1958. The present application was filed 10 days after the conclusion of the main adjudication proceedings. A question accordingly arises as to whether the present application can be entertained by me.

2. An Industrial Tribunal was constituted by the Government of India, Ministry of Labour and Employment by an order dated 31st July, 1956 and the industrial dispute between the Calcutta Port Commissioners and their workmen was referred to me for adjudication. The industrial tribunal was constituted presumably under the Act as it stood before the amendment. By the amending Act which came into force on 1st September, 1956 substantial alterations were made in the old Act specially in respect of constitution of an industrial tribunal. The qualifications and age limit for appointment of a person as a Presiding Officer of a Tribunal under the amended Act are substantially different from those under the old Act. Hence by no stretch of imagination a Presiding Officer of an industrial tribunal under the old Act can be deemed to be a Presiding Officer of the industrial tribunal under the Amended Act unless and until he is so appointed by a specific order of the Government, although he may be qualified under both the Acts for appointment as Presiding Officer of the Industrial Tribunal. I could function as Presiding Officer of an industrial tribunal under the old Act only till conclusion of the main adjudication proceedings, that is, till 1st March, 1958 except for the purpose of disposal of applications under sections 33 and 33-A pending on that day before me in respect of which my jurisdiction under the old Act continues till the said applications are finally disposed of. These do not extend my jurisdiction to receive new applications under section 33 or 33-A of the Industrial Disputes Act after 1st March 1958. The present application must accordingly be struck off.

(Sd.) A. DAS GUPTA,

Sole Member,

CALCUTTA;

The 28th March, 1958.

Central Government Industrial Tribunal,
Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

20/1, Gururaday Road, Ballygunge, Calcutta-19.

APPLICATION No. 1 of 1958: (U/s 33-A)

Shri Mazahar Ali, Pump Driver, Calcutta Port Commissioners, C.M.E. Department, c/o C.P.C. Workers Union, 3 Joykrishna Paul Road, Calcutta-23—Complainant.

Vs.

Calcutta Port Commissioners, 15, Strand Road, Calcutta-1—*Opposite Party.*

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 filed in connection with Reference No. 1 of 1956.

PRESENT:

Shri A. Das Gupta, Sole Member.

Dated, the 29th March, 1958.

APPEARANCES:

Shri A. L. Roy of C.P.C. Workers Union *for the complainant.*

Shri K. B. Bose, Council, with Shri N. M. Das Gupta, Advocate,—*for the Port Commissioners*

AWARD

The present application under section 33-A of the Industrial Disputes Act, 1947 has been filed by Shri Mazahar Ali, Pump Driver, C.M.E.'s Department, complaining that he was served with a notice on 23-12-1957 terminating his services with effect from 29-1-1958 on the ground of his attaining the age of superannuation. The petitioner alleges that he had been put off duty on and from 21-2-1957 by the Calcutta Port Commissioners on the alleged ground of having attained the superannuation age, without any medical examination. The petitioner thereupon filed an application before this Tribunal under section 33-A of the Industrial Disputes Act complaining against the action of the Calcutta Port Commissioners. This Tribunal gave an award in favour of the petitioner directing the Calcutta Port Commissioners to get the age of the petitioner verified by the Medical Officer as

indicated in the circular letter No. 6749/8, dated 16th February, 1948. The petitioner was accordingly examined by the Chief Medical Officer under the Calcutta Port Commissioners and on his report the petitioner has been served with a notice terminating his services with effect from 29th January, 1958 on the ground that he would attain the superannuation age on the said date. The application is opposed by the Port Commissioners.

2. The applicant was appointed on 20th February, 1929 and prior to 1953 there was no rigid rule in the Calcutta Port about the age of superannuation of inferior officers. In 1953 the Port Commissioners fixed 60 years as the age of superannuation for the inferior officers. Prior to the introduction of superannuation rule fixing 60 years as the superannuation age, the workers could not understand the implication of this rule. Immediately after the applicant came to know that he was to retire on completion of 60 years of age, he made several representations to the authorities for verification of the entry in the service book about his age by medical examination. Prior to the introduction of the superannuation age, the Port Commissioners laid down some procedure for ascertaining the age of a worker. The procedure as introduced by circular letter dated 16th February, 1948 is reproduced below:

"The Chairman directs that in future when a member of the inferior staff is sent to the Medical Officer for examination prior to recruitment the Medical Officer should be asked to record on the medical certificate his opinion as to the man's age.

As regards men already in the service, he further directs that where record of the age of a member of the inferior staff exists in any official document, the age as recorded should be accepted unless its correctness is challenged on good grounds by the employee concerned or the Head of his Department or Section has reason to believe that the age as recorded is patently absurd.

In either event, the employee concerned should be sent to the Assistant Surgeon, Dock Hospital for a certificate of age."

The entry about the age of the petitioner in his service book was in dispute. This fact was brought to the notice of the Port Commissioners and the petitioner appears to have been sent to the Medical Officer in 1955. The petitioner was told that he would be examined on some other day. As the petitioner was not sent again to the Medical Officer for verification of his age, his age could not be verified and he was made to retire on the basis of the disputed entry about his age in the service book. The petitioner filed an application under section 33-A of the Industrial Disputes Act before this Tribunal for relief. The application was allowed in the following terms:

"In the circumstances of the present case. I hold that there has been alteration in the service conditions of the applicant and this alteration was made without permission of this Tribunal. I accordingly allow the application and direct the opposite party, namely, the Port Commissioners, Calcutta to get the age of the applicant verified by a Medical Officer as indicated in the circular letter No. 6749/8, dated the 16th February, 1948. The applicant shall be superannuated on the date on which he completes 60 years of age, according to the opinion of the Medical Officer. If such date is beyond the 20th February, 1957, the applicant shall be deemed to have been in the employment of the Port Commissioners till such date and shall be entitled to wages and other benefit which he would have been otherwise entitled to upto the date of the superannuation. The application is disposed of accordingly. The Port Commissioners shall have the discretion to re-employ the applicant till the final decision is taken as indicated."

The petitioner suspecting that the authorities would stick to their previous decision get himself examined by the Staff Surgeon, Fort William, Calcutta on 30th July, 1957. Annexure A to the petition of complaint is a copy of the certificate granted by the Staff Surgeon. This reads as follows:

"Certified that I have examined Shri Jonab Mojher Ali on 30 July, 1957 and in my opinion his apparent age is 58/59 years."

The petitioner was examined subsequently by the Chief Medical Officer, Calcutta Port. Exhibit B/1 is the original report of the Chief Medical Officer. The report was in the following terms:

"The staff states he was born on the 29th January 1898. By his appearance his statement appears to be correct and his age may be taken up accordingly."

The Petitioner disputes the correctness of the statement as recorded by the Chief Medical Officer. He says that he told the Chief Medical Officer that he had been born on the 29th June, 1899. The petitioner states in para 12 of the petition of complaint that he was 58 years old on 30th July 1957. Thus he must have been born on the 30th July, 1899. The Staff Surgeon also did not make any definite statement about the age of the petitioner. According to him the petitioner was 58 or 59 years old on 30th July 1957 indicating thereby that the petitioner was born either in 1898 or 1899. We are not here called upon to discuss about the status of the Staff Surgeon or of the Chief Medical Officer. The fact remains that under the rules of the Port Commissioners, the Port Commissioners are to be guided by the report of their own Medical Officers and would not allow outside medical reports to create controversies and complications. The petitioner himself could not, as I have already mentioned, give the date of his birth correctly in the petition of complaint. According to his statement in para 12 of his petition he must have been born on the 30th July 1899 although he says in his examination before me that he was born on the 29th June, 1899. I cannot persuade myself to believe that the Chief Medical Officer wrongly recorded the petitioner's statement about the date of his birth. Besides, I have no jurisdiction to decide the correctness or otherwise the report of the Medical Officer in the present case under section 33-A of the Industrial Disputes Act. The only question that can arise in a case under section 33-A is whether there has been any alteration of the service condition of the workmen applicable to them immediately before commencement of the adjudication proceedings to their prejudice. The circular letter of 1948, as I have already observed in my previous award, has become a part of the service condition of all workmen who were either in employment of the Port Commissioners on the date of the letter or were appointed subsequently. According to the circular letter the Port Commissioners were to send all cases of disputed age to their Medical Officers for verification. Presumably the Port Commissioners are to act upon the report of their Medical Officers. In the present case the circular letter has been substantially complied with and I must hold that there has been no alteration of the service condition applicable to the petitioner immediately before the commencement of the main adjudication proceedings. If the petitioner has still any grievance against the report of the Chief Medical Officer and the action taken by the Port Commissioners on the said report, he may move the appropriate Government for an independent reference if he is so advised. The petition of complaint is accordingly dismissed. This is my award.

3. The petitioners case is that after the last award, he was allowed to resume his duties on and from 21st September 1957 and claims pay and allowances from 18th April 1957 to 20th September 1957. Now that he was superannuated with effect from a later date, the claim is covered by the previous award. Non-payment of the dues or in other words non-implementation of the award cannot be the subject matter of an enquiry under section 33-A of the Industrial Disputes Act.

(Sd.) A. DAS GUPTA,

CALCUTTA;

Sole Member,

The 29th March, 1958.

Central Government Industrial Tribunal,
Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

20/1, Gurusaday Road, Ballygunge, Calcutta-19.

APPLICATION No. 61 of 1957 (U/s 33-A)

Shri Baistamb, Weighman, P.W.I., K.P.D., c/o C.P.C. Workers Union, 3, Joykrishna Paul Road, Calcutta-23,—*Complainant*.

Vs

Calcutta Port Commissioners, 15 Strand Road, Calcutta-1—*Opposite Party*.

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 filed in connection with Reference No. 1 of 1956.

PRESENT

Shri A. Das Gupta, Sole Member.

Dated, the 31st March, 1958

APPEARANCES

Shri A. L. Roy of C.P.C. Workers Union—for the complainant.

Shri K. B. Bose, Counsel, and Shri N. M. Das Gupta, Advocate—for the Port Commissioners.

AWARD

The present application under section 33-A of the Industrial Disputes Act, 1947 has been filed by one Baistamb, Weighman, P.W.I., K.P.D., complaining that during

the pendency of the main adjudication proceedings, the Welfare Officer of the Calcutta Port has directed the petitioner by a letter dated 12th December 1957 requiring him to remove his brother from the quarter allotted to him without the previous permission of the Tribunal as contemplated by section 33 of the Act and has threatened the petitioner with disciplinary action in the event of non-compliance of the direction.

2. The application is opposed by the Port Commissioners.

3. The admitted facts of the case are that the complainant who has been allotted a quarter by the Calcutta Port Commissioners has been living in the quarter for sometime with his brother and that he has been served with a notice by the Welfare Officer acting on behalf of the Port Commissioners directing him to remove his brother from the quarter. It has been made clear in the said notice that in the event of the complainant's failure to comply with the direction, disciplinary action would be taken against him.

4. At the hearing Shri K. B. Bose, Counsel on behalf of the Port Commissioners exhibited three documents which have been marked Exhibits E/1, E/2 and E/3. Exhibit E/1 is a notice dated 16th September 1957 directing the complainant to remove the unauthorised person living in the quarter allotted to the complainant on or before 1st October 1957. On receipt of this notice the complainant stated that his brother had brought his son, who had been ailing at home for sometime for treatment and prayed that his brother might be permitted to stay in the quarter till the recovery of his son. This letter is dated 28th September 1957 and is marked Exhibit E/2. After recovery of the son he was sent home but the complainant's brother stayed on in the quarter allotted to the complainant. The Welfare Officer got an information that the complainant's brother was working in an outside firm. When the Welfare Officer found that the complainant had not acted in terms of his letter dated 28th September 1957 (Exhibit E/2) he directed the complainant by letter dated 12th December 1957 to remove his brother within 7 days from the date of receipt of the letter and threatened to take disciplinary action against him in the event of non-compliance with the direction.

5. The complainant in his petition of complaint pleads that so far as occupation of the quarter is concerned, the relationship between the Port Commissioners and the complainant is that of a landlord and a tenant and that as a tenant the complainant is completely at liberty to accommodate any relation or friend of his in the quarter. He complains that in issuing the notice dated 12th December 1957 to him, the Welfare Officer has contravened section 33 of the Industrial Disputes Act, 1947.

6. Section 33 of the Industrial Disputes Act, 1947 prohibits, during the pendency of adjudication proceedings in respect of an industrial dispute, alteration, to the prejudice of the workmen concerned in the dispute, of the service condition applicable to them immediately before the commencement of the adjudication proceedings, and discharge or punishment by dismissal or otherwise of any workman concerned in such dispute save with the express permission in writing of the Tribunal and section 33-A provides that in the event of any contravention of the provisions of section 33, the aggrieved employee may make a complaint in writing and the Tribunal is to adjudicate upon the complaint as if it were a dispute referred to or pending before it in accordance with the provisions of the Act and shall submit its award to the appropriate Government.

7. Industrial Tribunals can assume jurisdiction over industrial disputes and adjudicate upon such disputes only on a reference under section 10 of the Act by the appropriate Government. This is the general law. Section 33-A lays down a special law specifying the special circumstances under which an industrial tribunal can assume jurisdiction over an industrial dispute without any reference from the appropriate Government. As section 33-A lays down a special law, it must be strictly interpreted. An aggrieved workman can invoke the provision of section 33-A of the Industrial Disputes Act only when the pre-requisite conditions are fulfilled. The pre-requisite conditions are:

- (i) an adjudication proceeding in respect of an industrial dispute is pending before the Tribunal;
- (ii) an employer has altered the service conditions of the workmen concerned in the dispute to their prejudice or has discharged or punished by dismissal or otherwise any workman concerned in the dispute;

- (iii) that such acts of the employer have taken place during pendency of the adjudication proceedings;
- (iv) the employer has not obtained any previous permission in writing of the Tribunal for these acts.

8. The main adjudication proceedings started admittedly on the 31st July, 1956 and the award was published on the 30th January, 1958. No disciplinary action has yet been taken against the complainant. Hence in this view of the case, the present application is pre-mature.

9. It may be argued that the direction to remove his brother from the quarter is an alteration of the service condition applicable to the complainant. A printed copy of the rules governing the Commissioners' residential accommodation for Class IV employees has been placed before me. The rules appear to have been printed in 1955. Rule 5 of the rules clearly lays down that the allotment of quarters to an employee is liable to be cancelled if the employee shares accommodation allotted to him with any unauthorised person. An unauthorised person has been defined in Rule 2 to mean any person who is not a member of the family of the allottee. Family has again been defined in the same rule to mean wife, husband in the case of women employees, children, father, mother, minor brothers and sisters and step children solely dependent on the occupant.

10. The Port Commissioners in their written statement have specifically mentioned that the brother of the complainant living with him was an adult and in fact the complainant did not take any stand that he did not violate the rules governing the Commissioners' residential accommodation inasmuch as his brother was a minor and was a member of his family within the meaning of the word as defined in the rule. The complainant takes his stand on the common law regulating the relationship of landlord and tenant in respect of private houses. I may accordingly presume that the complainant's brother living with him is an adult and hence is not a member of his family as defined in the rules and when the rules were placed before Shri A. L. Roy, representative of the petitioner, he did not claim the petitioner's brother to be minor and to be a member of the family. As the complainant did not obtain any permission to retain his brother in his quarter after recovery of his son, his brother became an unauthorised person immediately after the complainant's son recovered from his illness. The rules which have been in existence from before the date of the main reference permit disciplinary action against an allottee of the Commissioners' quarters if he allows an unauthorised person to live with him in the quarter. I do not feel myself called upon here to decide about propriety or otherwise of the Rules, nor have I any justification to decide the question on a complaint under section 33-A of the Industrial Disputes Act, 1947. In this view of the case the notice dated 12th December 1957 served upon the complainant does not amount to alteration of the service condition applicable to the complainant immediately before the commencement of the main adjudication proceedings. On the contrary the letter dated 12th December 1957 was in conformity with the rules applicable to the complainant before the commencement of the adjudication proceedings and does not contravene section 33 of the Act. In this view of the case also the complaint is not tenable and must accordingly be rejected. This is my award.

CALCUTTA:

The 31st March, 1958.

A. DAS GUPTA,
Sole Member,
Central Govt. Industrial Tribunal, Calcutta.
[No. LR-II-31(7)/58.]

A. L. HANDA, Under Secy.

